

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v.

ARMANDO SPATARO

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Criminal No. 02-139  
(Civil No. 05-385)

**ORDER**

Before the Court is Armando Spataro's Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. § 2255 (Doc. 102). The sole issue raised by Mr. Spataro is that his sentencing contravenes the United States Supreme Court's decision in United States v. Booker, 543 U.S. 220, 125 S. Ct. 738 (2005). The government filed a Response to the Motion (Doc. 107), arguing that since Booker does not apply retroactively to claims on collateral review, Mr. Spataro's 2255 petition must be dismissed. We agree.

The United States Court of Appeals for the Third Circuit recently addressed the applicability of the Booker decision to the cases of those prisoners, like Petitioner, whose judgment was final prior to the Booker decision being rendered. In United States v. Lloyd, 407 F.3d 608 (3d Cir. 2005), cert. denied, 126 S.Ct. 288 (2005), the Third Circuit court held that although the rule announced in Booker qualifies as a new rule of criminal procedure, it is not to be applied retroactively to prisoners whose judgment was final as of the date the Booker decision was issued. "Because Booker announced a rule that is 'new' and 'procedural,' but not 'watershed,' Booker does not apply retroactively to initial motions under § 2255 where the judgment was final as of January 12, 2005, the date Booker issued. Lloyd, 407 F.3d at 615-616. Petitioner was sentenced on March 16, 2004, and no appeal was filed. Accordingly, because Mr. Spataro's judgment was final prior to the date Booker issued, the rule announced in Booker is not applicable to his case.

AND NOW, to-wit, this 18<sup>th</sup> day of January, 2006, it is hereby ORDERED, ADJUDGED, and DECREED that Armando Spataro's Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. § 2255 (Doc. 102), be and hereby is DENIED.

Maurice B. Cohill, Jr.  
Maurice B. Cohill, Jr.  
Senior United States District Judge

cc: counsel of record